

1 A Well, I don't think I did it the day after I heard
2 of the grant, but in the normal course every few months I get
3 ambitious and clean up my desk a little bit and throw out some
4 old stuff.

5 Q You felt it was okay to discard them because you
6 recognized that the FCC had granted the application, though?
7 Correct?

8 A Well, yes, and if any question every arose it could
9 always be reconstructed.

10 Q Very good. And that tabulation -- if you refer to
11 the tabulation on page 15 of your testimony that tabulation
12 doesn't contain any information showing how the allocation had
13 been made among the five construction permits to arrive at the
14 figures in the Red Lion certification, does it?

15 A No. This was the -- this was a reconstruction of
16 what I did prior to writing the November 7, '91 letter where I
17 was just looking for expenses in the aggregate for the low
18 power permit project.

19 Q So in response to an inquiry from the Commission it
20 would have been necessary for you to have explained your
21 allocation theory? Isn't that correct?

22 A Oh, yeah.

23 Q And you were prepared to provide that explanation if
24 asked, but you weren't prepared to provide it voluntarily by
25 disposing that an allocation had been made in the

1 certification? Is that right?

2 A No. First of all, I was told by Mr. Gardner that
3 Arent, Fox was going to be preparing the application. When I
4 gave him my theory and I gave him the numbers for the
5 allocation I said, "David, do you want me to write something
6 up?" and he said, "No, Arent, Fox is going to take care of
7 it," so when I left on vacation I thought Arent, Fox was going
8 to take care of it. And that, that -- when I got back and I
9 found the application I reviewed it to see if the numbers were
10 accurate and they were.

11 Q And you would agree with me, would you not, that the
12 expense certification that was submitted to the Commission
13 contains no information that would have placed the Commission
14 on notice that an allocation had been made among several
15 construction permits? Isn't that right?

16 A Well, I don't know. The Commission --

17 Q Well, I can refer you to the expense certification.

18 MR. BECHTEL: Excuse me. Excuse me. Your Honor --

19 JUDGE CHACHKIN: Did you finish your response?

20 MR. BECHTEL: The witness had not finished his
21 response.

22 JUDGE CHACHKIN: Well, I'm going to permit you to
23 finish your response.

24 MR. BECHTEL: Thank you.

25 WITNESS: Well, I was going to say that the

1 Commission knew he had five permits and, in fact, I think
2 contemporaneous with the assignment application of the Red
3 Lion and he filed shortly thereafter the extension
4 applications for the Lebanon and Lancaster. They were all on
5 file together, so I don't necessarily agree with the premise
6 of your question, the Commission had no notice. We had five
7 permits.

8 MR. HOLT: My question, sir --

9 MR. BECHTEL: If it please the Court, he has
10 interrupted him again and I ask, I ask the Court to direct
11 counsel to wait until Mr. Berfield has finished his answer
12 completely.

13 JUDGE CHACHKIN: I think that's a proper request.

14 MR. HOLT: I understand, Your Honor.

15 JUDGE CHACHKIN: Would you finish your response now,
16 Mr. Berfield.

17 WITNESS: In view of that, I have.

18 BY MR. HOLT:

19 Q Mr. Berfield, if you'd turn to page 26 of your
20 testimony which is the certification of expenses that was
21 submitted to the Commission, my question was did that
22 certification of expenses contain any information to place the
23 Commission on notice that an allocation had been made among
24 several construction permits to arrive at the figures provided
25 here?

1 A Well, the certification speaks for itself.

2 Q Is there any information in the application that was
3 submitted to the Commission to place it on notice that an
4 allocation had been made among several construction permits to
5 arrive at the figures for which Raystay was seeking
6 reimbursement?

7 A I don't remember.

8 Q I'll direct you to the application if you're having
9 trouble remembering that. It would be at Exhibit 241 which
10 has been admitted into evidence during the prior proceeding.
11 Take a moment to review that, if you would.

12 A I reviewed it occasionally.

13 Q Do you recall my question, sir?

14 A Could I have your question again?

15 Q Does -- did that application contain any information
16 to place the Commission on notice that an allocation had been
17 made among several construction permits to arrive at the
18 figures for which Raystay was seeking reimbursement?

19 A I don't believe it does.

20 MR. HOLT: I'd like to ask that a document be marked
21 for identification as TBF Exhibit 291. It is a six page
22 document bearing the notation "Attachment 2, Declaration" and
23 it's signed on 9/14/93 by Morton L. Berfield.

24 JUDGE CHACHKIN: The document described is marked
25 for identification as TBF Exhibit 291.

1 (The document that was referred to as
2 TBF Exhibit No. 291 was marked for
3 identification.)

4 BY MR. HOLT:

5 Q Mr. Berfield, do you have that document now before
6 you?

7 A I do.

8 Q Can you turn to page 6 of that document, please?
9 Are you there?

10 A Yeah.

11 Q Can you confirm that that's your signature in the
12 upper right-hand corner?

13 A Yes.

14 Q And was the document signed and dated on September
15 14, 1993?

16 A Yes.

17 Q Is this the declaration referred to in paragraph 17,
18 page 8 of your direct testimony? I refer you to the first
19 four words of that paragraph. It might help you.

20 A I'm sorry. What page?

21 Q Page 8, paragraph 17.

22 A Yes, it is.

23 Q Now, this declaration was filed as an attachment to
24 Glendale's Opposition to Trinity's Motion to Enlarge the
25 Issues concerning the Red Lion expense certification?

1 Correct?

2 A Correct.

3 Q And you were aware at that time that the declaration
4 was going to be reviewed by the presiding judge in determining
5 whether or not to grant Trinity's motion? Isn't that true?

6 A Yeah.

7 Q I'd like to direct your attention to page 4 of the
8 declaration, the last six sentences or six lines. They state,
9 "I am unaware of any Commission rule or policy."

10 A I'm sorry. Where are you?

11 Q I'm sorry. The last six lines of the first portion
12 of that page. I don't know if I can call it a paragraph, but
13 --

14 A What --

15 Q It begins with -- on the third line with, "I am
16 unaware."

17 JUDGE CHACHKIN: The third line of page 4.

18 WITNESS: Thank you, Your Honor.

19 BY MR. HOLT:

20 Q Yeah. I'm sorry.

21 A Yeah.

22 Q Okay. Would you read that to yourself?

23 A Yeah.

24 Q Now, that statement was made for the purpose of
25 telling the presiding judge what you knew about FCC law on the

1 subject? Correct?

2 A Well, an argument was being made by Trinity that it
3 had to be one-fifth, one-fifth and I was just stating that I
4 didn't know of any rule or policy that said it had to be
5 exactly pro rata.

6 Q So the purpose for making that statement was to tell
7 the presiding judge what you knew on that subject? Isn't that
8 so?

9 MR. BECHTEL: Your Honor, it's argumentative.

10 JUDGE CHACHKIN: Sustained.

11 BY MR. HOLT:

12 Q At the time you made the statement you were aware of
13 the integrated case, were you not?

14 A Yes, I think so.

15 Q And the declaration makes no mention of that case,
16 does it?

17 A No, but it's consistent with my view of the
18 integrated case.

19 Q And you mentioned the integrated case at your
20 deposition, didn't you?

21 A Yeah.

22 Q That was only after it had already been cited by
23 Trinity in its reply to Glendale's opposition pleading? Isn't
24 that right?

25 MR. BECHTEL: That's argumentative. The "only" is

1 argumentative there. I object.

2 MR. HOLT: I'll strike the word and rephrase the
3 question.

4 BY MR. HOLT

5 Q But that was after it had already been cited by
6 Trinity in its reply to Glendale's opposition pleading? Isn't
7 that right?

8 A I think it was cited by Trinity. I don't know I'm
9 aware.

10 Q Was it intended to represent in your affidavit that
11 you were unaware of any Commission rule or policy that
12 required a pro rata allocation among multiple allocations
13 when, in fact, you knew that the only Commission precedent you
14 had found on the subject had approved a pro rata allocation?

15 A Well, there's a difference between approving it and
16 requiring it. This statement says there is nothing requiring
17 it. The integrated case makes it quite clear that those
18 particular circumstances and those -- those were 301s which
19 were customized applications. Here there's like one
20 application. And so other kinds of Commission applications
21 might, might derive a different rule, but these were
22 completely different types of applications, and even all the
23 integrated case was approved under those circumstances and
24 this statement says that it's not required and that's -- I
25 think that's accurate.

1 Q Was it intended not to identify the integrated case
2 in your declaration and try to distinguish it from the case at
3 hand?

4 A Well, I don't think it was, I don't think it was
5 required, I mean, the matter of legal draftsmanship, and John
6 Schauble in our office drafted the declaration and the
7 pleading.

8 Q You reviewed it before you signed it, didn't you,
9 sir?

10 A The declaration? Oh, yeah.

11 Q Isn't it true that you omitted the integrated case
12 from your declaration because you felt that it would have
13 undermined your position?

14 A No.

15 MR. BECHTEL: Objection, sir. That's --

16 JUDGE CHACHKIN: He's answered.

17 MR. BECHTEL: -- an offensive question.

18 BY MR. HOLT:

19 Q I'd like to direct your attention to page 1 of your
20 declaration. That indicates that you're the author of the
21 November 7th letter, but it provides no explanation as to how
22 the figures set forth in that letter were arrived at, does it?

23 A No. It says what it says. I mean, the declaration
24 speaks for itself.

25 Q And it makes no mention of any review of legal

1 | invoices that you conducted in order to prepare the November
2 | 7, 1991 letter? Isn't that right?

3 | MR. BECHTEL: Judge, I'm going to make a, a broader
4 | objection and the objection is taking these sentences out of
5 | context or picking a -- for example, he picks a sentence, "I
6 | am the author of a letter," and then --

7 | JUDGE CHACHKIN: Which is it?

8 | MR. BECHTEL: Introductory sentence. And then he
9 | goes into various argumentative aspects of what was or was not
10 | stated. The document speaks for itself. This witness can be
11 | cross-examined on, on what he did and what he thought and his,
12 | his actions. We're not advancing the record by this
13 | offensive, argumentative and non-productive lines of
14 | questioning by counsel.

15 | JUDGE CHACHKIN: Mr. Holt, do you have anything to
16 | say?

17 | MR. HOLT: Well, Your Honor, I didn't mean to limit
18 | my question simply to that one sentence. Mr. Berfield is free
19 | to review the entire declaration and, and respond to my
20 | question, but I am trying to elicit information about his
21 | thought processes at the time.

22 | JUDGE CHACHKIN: Mr. Berfield, would you like an
23 | opportunity to review the entire document?

24 | WITNESS: Yes, Your Honor.

25 | JUDGE CHACHKIN: All right. We'll go off the

1 record.

2 (Off the record. Back on the record.)

3 JUDGE CHACHKIN: Mr. Berfield has indicated he has
4 reviewed the document.

5 BY MR. HOLT:

6 Q Mr. Berfield, to your recollection was any
7 declaration or other affidavit submitted as part of the
8 opposition that Glendale filed to Trinity's Motion to Enlarge
9 other than yours?

10 A I don't recall.

11 Q You have no recollection?

12 A I don't.

13 MR. HOLT: Will counsel stipulate to no other
14 affidavit or declaration was submitted as part of that
15 opposition?

16 MR. BECHTEL: I don't recall.

17 MR. HOLT: I can provide you with a copy of the --

18 MR. BECHTEL: Yes, please.

19 MR. HOLT: -- pleading. After reviewing that if you
20 could stipulate. I'd appreciate it. I'm giving Mr. Bechtel a
21 copy of the opposition pleading that was filed by Glendale in
22 response to Trinity's Motion to Enlarge the Issues seeking the
23 Red Lion construction permit.

24 MR. BECHTEL: And what's the question?

25 MR. HOLT: The question is whether any affidavits

1 other than Mr. Berfield's were submitted as attachments to
2 this pleading?

3 MR. BECHTEL: I would be pleased to so stipulate.

4 MR. HOLT: I'm sorry

5 MR. BECHTEL: I said I'll be pleased to so
6 stipulate.

7 MR. HOLT: Thank you Mr. Berfield, this --

8 JUDGE CHACHKIN: The stipulation is accepted.

9 BY MR. HOLT:

10 Q This declaration then was provided in order to tell
11 the Commission what Raystay had done in terms of arriving at
12 the Red Lion allocation? Correct?

13 A Yes. It was an attempt to explain how we came to
14 the numbers that were in the certification, yes.

15 Q Now, you've reviewed the declaration and I'll ask
16 you again. Does it make any mention of any review of legal
17 invoices that you conducted to prepare the November 7th
18 letter?

19 A Well, it certainly speaks to the November 7th letter
20 which I think referred to our records, and so by that -- in
21 that context I think it, it would refer to the invoices. I
22 think it's quite clear. I mean, this is based on a -- on the
23 sum total of the invoices.

24 Q It doesn't provide any explanation of your thought
25 process at the time that you reviewed those records, though,

1 does it?

2 A Well, yes. It contains my theory of allocation.

3 Q In preparation of the November 7th letter?

4 A Well, the November 7th letter was just gathering the
5 legal fees related to the permits in the aggregate.

6 Q Well, you provided a rather extensive showing in
7 your direct testimony now as to how you arrived at the figures
8 in preparing the November 7th letter? Isn't that correct?

9 A Are you -- what are you referring to?

10 Q In your direct written testimony in this case you
11 provided a showing as to how you arrived at the figures
12 specified in your November 7th letter.

13 A Well, could you be more specific as to what you're
14 -- are you referring to page 14 -- I mean, page -- Appendix A?

15 Q Correct. You've provided a tabulation and you've
16 attached various invoices that you considered at the time, did
17 you not?

18 A Yes, but you -- the November 7th letter was just a
19 collection of the invoices in the aggregate. This -- and this
20 does provide more detail. Yes, it does. Page 15 does provide
21 more detail, I believe, than in -- that is in the declaration.

22 Q And your testimony -- in your written testimony in
23 this case you provided information regarding how you made an
24 allocation of fees among TV 40 and the construction permits
25 with respect to certain legal services that were provided that

1 | were shared expenses, correct, and I'll refer you specifically
2 | to the --

3 | A Yes, that's correct. That's correct.

4 | Q You didn't provide any information about how you had
5 | made that allocation in your declaration, did you?

6 | MR. BECHTEL: Judge, I'm going to, I'm going to ask
7 | a question. I'm going to ask counsel to explain the
8 | relevance. Are we trying --

9 | JUDGE CHACHKIN: I'm having difficulty understanding
10 | the relevancy.

11 | MR. BECHTEL: -- a misrepresentation in a pleading
12 | or referring to a misrepresentation in the certification as
13 | originally filed?

14 | MR. HOLT: Well, Your Honor, this declaration
15 | purports to explain the facts surrounding how Mr. Berfield
16 | arrived at the figures and yet it -- as specified in the Red
17 | Lion expense certification, but yet it doesn't provide the
18 | facts. It provides an opinion as to the propriety of the
19 | figures specified. In fact, it doesn't even identify that Mr.
20 | Berfield is the individual who calculated the figures. And my
21 | -- I guess my question is why.

22 | MR. BECHTEL: And my question is why does that mean
23 | a damn thing?

24 | MR. COHEN: How is that relevant, the fact that they
25 | didn't provide this information? You're not suggesting that

1 | there's any intentional deception in this declaration? What
2 | are you suggesting by all this? The fact that obviously
3 | they're at hearing now, there's an issue and so, therefore, as
4 | I assume all lawyers do, they prepare as complete as they can
5 | a direct case. The fact that they didn't prepare a complete
6 | -- provide all the information at the time of answering the
7 | Petition to Enlarge Issues, I fail to see how that's relevant.

8 | MR. HOLT: Yes, Your Honor. I understand your
9 | ruling. Thank you.

10 | JUDGE CHACHKIN: And obviously when you refer to a
11 | declaration presumably the purpose is to show that there's
12 | inconsistencies between a prior exhibit and the exhibit being
13 | offered, but I haven't seen any of that being attempted here.

14 | MR. HOLT: Your Honor --

15 | JUDGE CHACHKIN: Somehow you're only quibbling with,
16 | with Mr. Berfield over the fact that his presentation wasn't
17 | as complete when he filed his Opposition to the Petition to
18 | Enlarge Issues as it is now when he's faced with an issue, but
19 | I don't understand how that is relevant to the trial or the
20 | issues in this case. If there are any inconsistency you
21 | certainly have a right to point it out.

22 | MR. HOLT: Thank you, Your Honor. Mr. Berfield,
23 | what, if anything, did you discuss with Mr. Schauble about the
24 | integrated case at the time you prepared this declaration?

25 | MR. BECHTEL: I object. It's irrelevant.

1 JUDGE CHACHKIN: How is that relevant --

2 MR. HOLT: Well --

3 JUDGE CHACHKIN: -- whether he discussed it with Mr.
4 Schauble or not? How is that relevant? I believe Mr.
5 Berfield has indicated he was aware of the integrated case at
6 the time he prepared this declaration. Apparently he was
7 aware of it at the time the certification was prepared. Is
8 that right, Mr. Berfield? Isn't that what you've testified
9 to?

10 WITNESS: Yes, sir.

11 JUDGE CHACHKIN: Now, whether he discussed it with
12 Mr. Schauble or not, someone in his office, how is that
13 relevant?

14 MR. HOLT: Mr. Berfield has testified that Mr.
15 Schauble was the person who drafted the declaration and I'm
16 wondering why the information wasn't included if he had
17 discussed it with Mr. Schauble.

18 MR. BECHTEL: That's irrelevant. In addition,
19 that's a misstatement because the counsel -- because Mr.
20 Berfield testified that he read it before he signed it.

21 MR. HOLT: But Mr. -- he also -- Your Honor --

22 JUDGE CHACHKIN: This is Mr. Berfield's declaration.
23 Whether Mr. Schauble drafted it or not is irrelevant. This is
24 Mr. Berfield's declaration and he's responsible for it.

25 BY MR. HOLT:

1 Q Mr. Berfield, at the time you signed your -- or
2 prior to you signing your declaration you had reviewed
3 Trinity's Motion to Enlarge the Issues? Correct?

4 A I'm sorry. I didn't hear that, that question.
5 Could you repeat it?

6 Q At the time that you signed your declaration --
7 prior to the time you signed your declaration you had reviewed
8 Trinity's Motion to Enlarge the Issues, hadn't you?

9 A I still didn't -- I'm sorry. I still didn't hear
10 the last part.

11 JUDGE CHACHKIN: He wants to know if you had
12 reviewed the Motion to Enlarge Issues prior to the time of
13 preparing this declaration --

14 WITNESS: Okay.

15 JUDGE CHACHKIN: -- and Mr. Berfield said he had.

16 WITNESS: Thank you very much. I believe I had.

17 BY MR. HOLT:

18 Q And did you -- you also reviewed the Opposition to
19 the Motion to Enlarge Issues that was filed by Glendale, did
20 you not?

21 A I'm sure I did. I was not responsible -- I was not
22 involved in drafting the pleading.

23 Q Did you review it before it was filed?

24 A I think I probably saw it before it was filed, yes.

25 Q Do you recall seeing it before it was filed?

1 A I probably did. I don't think I signed the
2 pleading. I signed -- I was acting as the witness and I
3 signed the declaration. Mr. Schauble and Mr. Cohen were the
4 attorneys, but I probably saw it. I just don't have a
5 specific recollection.

6 Q I'd like to direct your attention to paragraph 5,
7 page 3 of your direct written testimony.

8 A Yes, sir.

9 Q It states that during your review of Cohen &
10 Berfield's legal invoices in preparation of your November 7th
11 letter you referred to time records of attorneys that were
12 available. Correct?

13 A Correct.

14 Q And those were time records of your colleagues John
15 Schauble and Roy Boyce, were they not?

16 A Yes.

17 Q And those records indicated the amount of time that
18 those individuals had spent and the general nature of the
19 work? Is that true?

20 A Yes.

21 Q And aside from those time records did you review any
22 other documents or records showing any amounts that had been
23 charged for the time of Mr. Schauble or Mr. Boyce during the
24 course of preparing your November 7th letter?

25 A I'm sorry. What was the question again?

1 Q Aside from these time records did you review any
2 other documents or records showing any amounts that had been
3 charged for the time of Mr. Schauble or Mr. Boyce for services
4 rendered that are reflected in the invoices?

5 A No. I -- well, I looked at the work, of course, and
6 I looked at the invoices and I looked over the time sheets.

7 Q But you didn't review any other documents that
8 reflected any amounts that had been charged for their time?
9 Is that right?

10 JUDGE CHACHKIN: Were there any other documents?

11 WITNESS: You mean other than an invoice?

12 BY MR. HOLT:

13 Q Well, you reviewed the invoice and you reviewed the
14 time records and I'm seeking to determine whether there were
15 any other documents that you reviewed at that time --

16 A Well --

17 Q -- that showed the charges that -- for Mr. Schauble
18 and Mr. Boyce's time?

19 A I don't think there would have been any other
20 documents.

21 Q And it was not the practice of your firm at the time
22 to keep similar time records for you or for Mr. Cohen? Isn't
23 that right?

24 A Well, Mr. Cohen and I keep track of what we're
25 doing, but we don't keep them in the files for any extended

1 periods of time.

2 Q And, in fact, you -- whatever documents you maintain
3 you discard after the bill reflecting the services rendered is
4 prepared?

5 A Well, I wouldn't say that. We usually wait until
6 -- at least I always wait until the bill is paid. Sometimes
7 that takes awhile, but --

8 Q And then you discard --

9 A -- usually -- that's correct. Periodically I go
10 through and try to clean out my desk.

11 Q And to your knowledge is that Mr. Cohen's practice,
12 as well?

13 A I think it is.

14 Q So in order to calculate your firm's fees at the end
15 of the month it was your practice to review the time sheets of
16 Mr. Schauble and Mr. Boyce and factor in whatever time you had
17 spent on the matter during the month? Correct?

18 A Well, yes, and also to review the work, the work
19 that's involved.

20 Q And to your knowledge was it Mr. Cohen's practice to
21 do the same?

22 A I assume so, yes.

23 Q I presume in light of the fact that you didn't
24 retain time records for any period of time that you didn't
25 review any time records for yourself or Mr. Cohen at the time

1 that you prepared your November 7th letter? Isn't that so?

2 A Well, I certainly didn't have anything that reached
3 back to the early stages of the project. I think there were
4 one or two bills in 1991 within say five or six months of my
5 November 7, '91 letter. I might have looked at those. I had
6 a little informal list. There might have been one or two
7 items that I had done that I checked back on.

8 Q Do you have a specific recollection of doing that?

9 A Well, I know I looked at whatever I had. I don't
10 have a specific recollection of what I had. I, I mean, I know
11 I didn't have anything that dated back to '90 or -- but I
12 might have had something within six months of the November
13 letter, something like that, something like that, six or eight
14 months.

15 Q During the period 1990 through 1991 it was the
16 practice of your firm, was it not, to bill the time of Mr.
17 Schauble and Mr. Boyce at the rate of \$200 an hour? Correct?

18 A That was generally the case, yes.

19 Q And it was the practice of your firm during that
20 period to bill your time and the time of Mr. Cohen at the rate
21 of approximately \$200 or more per hour depending on the nature
22 of the work? Correct?

23 A Correct.

24 Q After your deposition on March 25, 1994 Trinity was
25 provided with a set of Cohen & Berfield invoices that you

1 | reviewed in preparation of your November 7th letter to which
2 | Mr. Bechtel, your counsel, appended pertinent copies of time
3 | records from Messrs. Boyce and Schauble relative to those
4 | invoices. I'd like to provide you with a copy of what was
5 | given to us.

6 | MR. HOLT: I'd like to ask that it be marked as --
7 | for identification as TBF Exhibit 292.

8 | JUDGE CHACHKIN: TBF 292 consists of invoices --

9 | MR. HOLT: Correct, Your Honor.

10 | JUDGE CHACHKIN: -- 27 pages in length.

11 | MR. HOLT: Correct, Your Honor.

12 | JUDGE CHACHKIN: That document will be marked for
13 | identification as TBF Exhibit 292.

14 | MR. HOLT: I would note, Your Honor, that it also
15 | includes copies of time records that are attached to the
16 | invoices.

17 | (The document that was referred to as
18 | TBF Exhibit No. 292 was marked for
19 | identification.)

20 | MR. HOLT: Before I proceed, Your Honor, I'd like to
21 | move TBF Exhibit 291 which is the declaration of Morton
22 | Berfield into evidence.

23 | JUDGE CHACHKIN: Isn't that -- oh. Any objection?

24 | MR. BECHTEL: No objection, sir.

25 | JUDGE CHACHKIN: TBF Exhibit 291 is received.

1 (The document that was previously
2 marked for identification as TBF
3 Exhibit No. 291 was received into
4 evidence.)

5 BY MR. HOLT:

6 Q Mr. Berfield, do you have a copy of what's been
7 marked as TBF Exhibit 292 for identification before you?

8 A I do.

9 Q Will you take a moment to review that document?

10 A Yes, sir.

11 Q Are these the invoices and time records that formed
12 the basis for your calculation of the figures -- for the
13 figure for legal fees as set forth in your letter of November
14 7, 1991?

15 A Well, they're the ones that existed as of the 1994
16 discovery period.

17 Q Do you recall there being others that you referred
18 to?

19 A Well, as I referred to a minute ago, there were some
20 '91 items that I had helped with and I might have had a, a
21 notation as to those in '91, but they were no longer around
22 when we hit discovery in this, in this issue.

23 Q But you don't recall reviewing any time records for
24 Mr. Boyce or Mr. Schauble other than those that are provided
25 in here, do you?

1 A That's correct. That's correct.

2 Q My understanding is that you and Mr. Cohen divide
3 responsibility for preparing and sending invoices to clients
4 for services that are performed by --

5 A Yes, we do.

6 Q -- you and he. Correct? Could you please go
7 through these invoices and identify for me which of those were
8 prepared by you and which, which of them were prepared by Mr.
9 Cohen?

10 A Yes, sir. I'd be happy to. On page 2 of your
11 exhibit, the March 13, 1989 bill, those were services
12 performed by me and I prepared the bill.

13 Q Which -- I'm sorry. March 13th?

14 A March 13, 1989, page 2 of your exhibit.

15 Q Okay.

16 A The April 4, 1990 bill was prepared by Mr. Cohen.
17 The May 1, 1990 was just a restatement of my earlier March
18 bill.

19 Q Excuse me. I believe it refers to April 1990, April
20 4, 1990 balance due. Isn't that a bill prepared by Mr. Cohen?

21 A Yeah. I'm sorry. You're correct. I'm sorry.
22 That's a resend of his -- of Mr. Cohen's April 4, 1990 bill.
23 You're correct. Thank you.

24 Q That would have been prepared by Mr. Cohen then?

25 A Yes. That was his time.

1 Q And what about for June 4, 1990?

2 A Prepared by Mr. Cohen. There are two bills for June
3 4, 1990, both prepared by Mr. Cohen. The August 7, 1990 bill
4 on page 12 was prepared by Mr. Cohen. The November 9, 1990
5 bill on page 15 was prepared by Mr. Cohen. On page 22 the May
6 6, 1991 bill I prepared and on page 25 the June 5, 1991 bill I
7 prepared and the November 5, 1991 bill I prepared.

8 Q If you will refer back for a moment to pages 11 and
9 14 of TBF Exhibit 292 for identification -- 72 for
10 identification -- 292 for identification. That's pages 11 and
11 14.

12 A Yes.

13 Q The notations next to the entries reflected on those
14 pages are notations which refer to the amounts of time that
15 Mr. Berfield spent performing the work here? Correct?

16 A I think --

17 Q Mr., Mr. Boyce. I'm sorry.

18 A Yes.

19 Q And they refer to hours that he spent on the
20 project? Correct?

21 A I believe that's correct.

22 Q There's a tabulation attached as Appendix A to your
23 direct written case, page 15, and on paragraph 4 of your
24 written testimony you identify the tabulation as a
25 "reconstruction prepared recently for this proceeding."